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Court Grants Class Certification, Denies State’s Motion to Dismiss Federal Class Action Lawsuit To Secure Medicaid Recipients Necessary Dental Coverage

Litigation Could Potentially Benefit Thousands of Low-Income New Yorkers Suffering From State’s Flawed and Inadequate Medicaid Dental Program

(NEW YORK, NY) – The Legal Aid Society and Willkie Farr & Gallagher LLP lauded a September 30th court decision in *Ciaramella et al v. Zucker* - a [federal class action lawsuit](#) brought against the New York State Department of Health last year on behalf of low-income Medicaid recipients in New York denied coverage for medically necessary dental care by New York State – which grants Plaintiffs class certification and denies the State of New York’s motion to dismiss thus allowing the lawsuit to proceed.

“We are happy that the court recognized the right of Medicaid recipients to challenge these archaic rules that negatively impact their health and well-being, and in some cases, put their lives at risk,” said **Belkys Garcia, Staff Attorney with the Law Reform Unit at The Legal Aid Society**. “As the largest institutional legal provider in New York City, we see first firsthand how access to quality dental care impacts every facet of an individual’s life. We will continue to fight on behalf of our clients to ensure that no one is denied their fundamental right to healthcare.”

“By denying the bulk of the defendants’ motion to dismiss and certifying a class of Medicaid-eligible New Yorkers who continue to be denied coverage for dental care, the court has reaffirmed that the New York State Department of Health cannot deprive New York’s most vulnerable populations of their right to medically necessary healthcare through blanket bans and discriminatory coverage restrictions,” said **Wesley Powell, partner at Willkie Farr & Gallagher LLP**. “We look forward to continuing this litigation and securing needed dental care for Medicaid-eligible New Yorkers.”

Background:

In August 2018, Plaintiffs Frank Ciaramella and Richard Palazzolo brought this suit on behalf of thousands of Medicaid-eligible New Yorkers, whose expenses associated with medically necessary dental services are not reimbursable by New York’s Medicaid Program because of the Program’s categorical ban on dental implants and strict limits on replacement dentures. As a result, the Department of Health changed their rules to allow for coverage of dental implants and replacement dentures only in very narrow circumstances.

In November, Plaintiffs filed a corrected amended complaint with six additional Plaintiffs -- Lillian Velazquez, AnneMarie Walker, Antonio Martin, Christopher Russo, Matthew Adinolfi, and Jody Virtuoso – challenging the old and new rules on dental implants and replacement dentures. The amended complaint also challenges DOH limits on root canals and crowns. Further limiting provision of these services is a DOH rule known as the “8 points of contact” rule, which states the if a person has 8 teeth (4 pair) touching towards the back of the mouth, DOH will pay for other teeth to be extracted rather than provide treatment, such as a root canal or crown.

The suit asserts that the rigid rules in the NYS Medicaid Program Dental Policy and Procedures Code Manual restrict coverage for services that are necessary for Medicaid recipients to maintain their overall health. The current NYS rules ignore the close connection between poor oral health and other health problems suffered by the Medicaid-eligible population, including periodontal disease, gum disease, diabetes and related health complications.

The current rules in the NYS Medicaid Program Dental Policy and Procedures Code Manual restrict coverage for services necessary for Medicaid recipients to maintain dental and overall health. DOH’s new rule states full or partial dentures “whether unserviceable, lost, stolen or broken will not be replaced for a minimum of eight years” except when an individual can demonstrate medical necessity with a letter from a physician explaining how dentures would alleviate a serious health condition or improve employability and a letter from a dentist explaining the need, along with other prior approval requirements. DOH’s new rule on implant services requires a letter from a physician that explains “how implants will alleviate the patient’s medical condition” and a letter from a dentist stating “why other covered functional alternatives for prosthetic replacement will not correct the patient’s dental condition and why the patient requires implants.”

This suit is the latest example of New York State’s Department of Health denying medically necessary care to Medicaid-eligible recipients. In 2015, for example, DOH was found to have

violated the Medicaid Act by refusing medically necessary care to transgender Medicaid recipients, *Cruz v. Zucker*. Legal Aid and Willkie Farr & Gallagher achieved this historic victory which secured transgender New Yorkers' right to Medicaid coverage of medically necessary gender affirming treatment.

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The Legal Aid Society exists for one simple yet powerful reason: to ensure that New Yorkers are not denied their right to equal justice because of poverty. For over 140 years, we have protected, defended, and advocated for those who have struggled in silence for far too long. Every day, in every borough, The Legal Aid Society changes the lives of our clients and helps improve our communities. <https://www.legalaidnyc.org>

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